



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Interested Persons

From: Jonathan Wayne, Executive Director

Date: September 28, 2006

Re: Updated Advice Regarding Independent Expenditures

In response to questions the Ethics Commission staff has received recently on independent expenditures, we have updated the advice in this memo. The advice from staff in this memo is not binding on the Commission, and the Commission will judge each matter brought before it on a case-by-case basis. A copy of the relevant law (21-A M.R.S.A. §1019-B) is attached with the corresponding Commission rule regarding independent expenditures.

What is an “independent expenditure”?

Independent expenditures are payments by individuals and organizations other than candidate committees for certain communications referring to clearly identified candidates.

Before October 18 (more than 21 days before the general election): independent expenditures are payments for communications (for example, advertisements and literature) that expressly advocate the election or defeat of a candidate.

On or after October 18 (within 21 days of the election): communications that are disseminated to voters on or after October 18 are presumed to be independent expenditures if they name or depict a candidate and if there is a Maine Clean Election Act candidate in that candidate’s race. Some communications are exempt, such as slate cards sent by political parties (please see exceptions below).

How do I know if my advertisement or literature “expressly advocates” the election or defeat of a candidate?

The term “expressly advocate” is defined in Chapter 1, Section 10(2)(B) of the Commission Rules. The definition includes phrases such as “Jones for House of Representatives” or “Vote for the Governor,” and other words which in context can have no reasonable meaning other than to urge the election or defeat of one or more clearly identified candidates.

If I make an independent expenditure, how does that affect a Maine Clean Election Act candidate?

Independent expenditures are included in the Ethics Commission's determination of whether a Maine Clean Election Act candidate is entitled to receive matching funds. For example, if Candidate A and Candidate B (a Maine Clean Election Act candidate) are opponents in the general election, and a political action committee (PAC) makes an independent expenditure in support of Candidate A, Candidate B may be entitled to receive matching funds. The independent expenditure has the same effect regardless how Candidate A is financing his campaign.

How do I report independent expenditures?

If you or your organization makes an independent expenditure, you must file a report with the Commission which has developed a special reporting form. It is available on the Commission's website at http://www.maine.gov/ethics/pdf/forms/2006_independent_expenditure.pdf. The filer must report the date, amount, payee, and purpose of the expenditure, and must allocate the cost among the different candidates affected by the expenditure, indicating whether the expenditure was made in support of or in opposition to each candidate. The Election Law requires the report to contain a sworn statement disclosing whether the expenditure was made in cooperation or consultation with the candidate, so please locate a notary public in advance of the filing deadline.

If the expenditure is greater than \$250 per candidate, the report must be filed within 24 hours of making the expenditure. If the expenditure is greater than \$100 but not more than \$250 per candidate, it must be reported according to the schedule on the cover page of the independent expenditure report.

- The following events constitute making an expenditure even if no payment has been made to the vendor: placing an order for a good or service; a promise or agreement (including an implied one) that a payment will be made; the signing of a contract for a good or service; and the delivery of a good or performance of a service by a vendor.
- Any independent expenditure report filed after October 30, 2006 is required to include additional information on Schedule B-IE-3 including the date of the order for the expenditure; date vendor began providing services in connection with the expenditure; date the total amount of the expenditure was discovered; and a statement why the expenditure could not be reported by before October 30th.

What if I enter into an obligation to make a payment for goods and services? Do I have to report the obligation as an independent expenditure before I pay the vendor?

The legal definition of expenditure includes not just the making of a payment but also “[a] contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure.” (21-A M.R.S.A. §1012(3)(A)(3)) The Commission views this as requiring the reporting of an unpaid obligation. The Maine Clean Election Act explicitly

requires that “obligations” be considered when determining whether a Maine Clean Election Act candidate is entitled to receive matching funds.

Can I file an independent expenditure report electronically or by fax?

Filers may submit the reports by fax to (207) 287-6775, provided that the original report is received by the Commission within five calendar days. The Commission cannot accept independent expenditure reports electronically on the Commission’s website. Section 1019-B requires the independent expenditure report to include a notarized statement disclosing whether the expenditure was made in cooperation or consultation with the candidate, and it is not possible to comply with that requirement through electronic filing.

Do I have to file an independent expenditure report on a Saturday or Sunday?

If the 24-hour deadline for an independent expenditure report falls on a weekend or holiday, the report must be filed on that day. On the Saturday and Sunday before an election, the Commission office is open and staffed from 8:00 to 5:30. At all other times outside regular business hours, the report must be faxed to the Commission at (207) 287-6775.

Does making an independent expenditure turn me or my organization into a political action committee?

No. Any individual or organization may make an independent expenditure. Only those organizations that meet the legal definition of a PAC (21-A M.R.S.A. §1051(5)) must register and file regular campaign finance reports as a PAC.

I have heard that I should not coordinate my spending with the candidate I want to support. Why?

Independent expenditures must be independent of the candidate. Any expenditure made by a third-party in consultation or cooperation with a candidate is considered to be a contribution to the candidate and is not an independent expenditure. For example, if a supporter wants to place an ad supporting a candidate in the local newspaper and asks the candidate to supply him with a campaign photograph, the cost of the ad would be considered a contribution to the candidate. The cost would have to be reported by the candidate, and the supporter would not be required to file an independent expenditure report.

What communications are covered by the rebuttable presumption that applies beginning October 18?

The law was designed to apply to written and oral communications intended to influence the nomination, election, or defeat of a candidate. Under the Commission’s rules, the following types of communications are covered under the rebuttable presumption:

- Printed advertisements in newspapers and other media
- Television and radio advertisements

- Printed literature
- Recorded telephone messages
- Scripted telephone messages by live callers
- Electronic communications.

This list is not exhaustive and other types of communication may also be covered. In general, any expenditure that has all of the following four elements is covered by the rebuttable presumption:

- an expenditure made to design, produce, or disseminate a communication
- that is disseminated in the last 21 days before an election, and
- that names or depicts a clearly identified candidate
- who is in a race involving a Maine Clean Election Act candidate.

If the expenditure is covered by the presumption and is greater than \$100 per candidate, the person making the expenditure must either file an independent expenditure report or a signed statement that the expenditure was not made with the intent to influence the election.

What determines if a communication is made within the 21-day period that begins on October 18?

The 21-day period applies to when the communication is disseminated to voters. The date of the dissemination is the date of the postmark, broadcast, or hand-delivery of the communication.

If expenditures are made before the 21-day period to design or produce a communication that is then disseminated during the 21-day period, the expenditure may nevertheless be covered by the presumption, and the costs of designing, producing, and disseminating the communication must be reported.

How do I rebut the presumption that the communication is a campaign-related independent expenditure?

To rebut the presumption, the person making the expenditure must file a signed written statement that the expenditure was not made in order to influence the election. As a convenience, the Ethics Commission has developed a form that may be used for this purpose but using the form is not mandatory. The person filing a rebuttal statement is welcome to include any relevant evidence. It is acceptable to file the rebuttal statement by faxing it to (207) 287-6775. Please note that if the 48-hour deadline falls on a weekend, the report must be filed on a Saturday or a Sunday. The Commission office will be open and staffed on the weekend before the November 7, 2006 general election.

If a person has a specific communication that appears to be covered by the presumption and believes that the communication is not intended to influence the nomination, election or defeat of a candidate, the person may submit the rebuttal statement to the Commission in advance of disseminating the communication for an early determination. The request must include the

complete communication and be specific as to when and to whom the communication will be disseminated.

While there is no penalty for failing to file a statement rebutting the presumption within 48 hours, if the Commission determines that the communication was covered by the presumption and an Independent Expenditure Report was not filed on time, the person making the expenditure could be assessed a penalty for late filing.

The Commission will take into consideration any evidence relevant under the statute, including the following:

- Does the language of the communication appear designed to influence the nomination, election, or defeat of a candidate?
- Was the communication disseminated to voters in the district of the candidate(s) mentioned in the communication?
- Was the communication disseminated to voters in other districts?
- How many voters received the communication?
- Is the communication directed to voters at all?
- Does the communication seem primarily designed for some identifiable purpose other than influencing the nomination, election, or defeat of a candidate?
- Does the communication mention all candidates running in the district?
- When was the communication produced, and when was it distributed?

What if the cost of disseminating a communication (including the value of any written materials received) is less than \$100 per candidate?

The definition of independent expenditure applies only to expenditures for communications. If the person making the communication did not spend or obligate more than \$100 per candidate to design, produce, or disseminate the communication and received nothing with a value exceeding \$100 per candidate from any other person in connection with the communication, no independent expenditure report or rebuttal statement is necessary.

Example: a community organization maintains a list of e-mail addresses of individuals who are concerned about local economic development issues. At no cost, it sends an e-mail to the concerned citizens endorsing a legislative candidate. The organization would not be required to file an independent expenditure report or submit a rebuttal statement because the communication involved no expense.

Are there any expenditures that are exempt from the reporting requirement and the rebuttable presumption?

Certain election-related activities are excluded from the legal definition of “expenditure” in the Election Law. Because these activities are not considered expenditures, they do not need to be reported as independent expenditures and the rebuttable presumption does not apply to them. These excluded costs include:

- News stories and editorials distributed through a broadcasting station, newspaper, or other periodical;
- Any communication from a membership organization (*e.g.*, a union or trade association) or corporation to its members or stockholders if that organization is not organized primarily for the purpose of influencing the nomination or election of any person for state or county office;
- Activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not mention a clearly identified candidate;
- The use of offices, telephones, computers, or similar equipment when that use does not result in additional cost to the provider; and
- The payment by a party committee for a slate card (see definition below).

For a full list of payments and obligations exempted from the legal definition of “expenditure”, *see* 21-A M.R.S.A. §1012(3)(B).

Isn’t there an exception for communications naming three or more candidates?

There is an exception for communications involving three or more candidates, but it applies only to party committees and it applies only to communications that meet the following requirements:

- The communication lists the names of at least 3 candidates for election to public office.
- The communication is distributed through public advertising such as broadcast stations, cable television, newspapers and similar media, and through direct mail, telephone, electronic mail, publicly accessible sites on the Internet or personal delivery.
- The treatment of all candidates in the communication is substantially similar.
- The content of the communication is limited to:
 - (1) The identification of each candidate, with which pictures may be used;
 - (2) The offices sought;
 - (3) The offices currently held by the candidates;
 - (4) The party affiliation of the candidates and a brief statement about the party or the candidates' positions, philosophy, goals, accomplishments or biographies;
 - (5) Encouragement to vote for the candidates identified; and
 - (6) Information about voting, such as voting hours and locations.

If the communication contains language outside the categories of this paragraph, it does not qualify as a slate card.

Are telephone communications covered by the rebuttable presumption?

In the view of the Commission, the rebuttable presumption in Section 1019-B would cover automated telephone messages and calls from live individuals that are scripted, if the communications have the four elements described above on page 4.

Are there any individuals or organizations that are exempt from the rebuttable presumption?

Section 1019-B does not exempt any category of individuals or organizations from the rebuttable presumption. Nevertheless, as noted above, many costs by membership and news organizations are excluded from the legal definition of expenditures, and therefore are not covered by the independent expenditure law.

Does my membership organization have to report its communications to its members?

The Election Law contains an exemption for membership organizations that are not organized primarily for the purpose of influencing an election. Communications from those organizations to their members are not considered expenditures, and therefore are not considered independent expenditures. If the communications expressly advocate the election or defeat of a candidate, the expenditures must be disclosed in a special report required by 21-A M.R.S.A. §1019-A. Those expenditures, however, will not trigger matching funds under the Maine Clean Election Act.

What if the costs of producing the communication are paid for by an organization that is different than the organization that disseminates the communication? Which organization must file an independent expenditure report or a rebuttal statement?

Some of the questions posed to the Commission suggest that organizations may purchase or produce copies of a written communication (such as a legislative scorecard or voting record) and provide them to another organization that will distribute them. Persons paying for *or* disseminating communications covered by the presumption will be expected to demonstrate a high degree of good faith to ensure that all design, production, and distribution costs are reported to the Commission so that the correct amount of matching funds will be received by MCEA candidates.

When calculating whether it has spent more than \$100 per candidate, an organization that has been supplied printed communications covered by the presumption and that distributes them must report *both* its own distribution costs *and* the value of the materials it has distributed. The Commission requests that the organization make a good faith effort to determine the value of the materials by ascertaining the *actual* design and production costs of the materials distributed. If the actual costs cannot be determined with a reasonable effort, the organization should estimate the fair market value of the materials it has distributed. Both the distributions costs and the value of the materials must be included in the Independent Expenditure report, unless the organization has filed a rebuttal statement.

Example: A PAC receives 500 copies of literature referring to a candidate that it distributes one week before the general election in order to influence the outcome of the election. By checking with the person or organization that supplied the literature, the PAC determines that the actual cost of the literature was \$400. The PAC spends \$200 distributing the literature. The PAC should file an independent expenditure report with a total expenditure of \$600.

What about legislative scorecards or voting records of legislators?

Some organizations produce literature that summarizes legislators' voting records on particular issues and rates the legislators on their voting records. If these communications have the four elements of the rebuttable presumption described above on page 4, the person paying for or disseminating the literature will be required to file either an independent expenditure report or a written statement rebutting the presumption if more than \$100 is spent in any candidate's race. For communications that refer to multiple candidates, the Commission's rule (attached) explains how to allocate the cost among the candidates.

The Commission will consider each rebuttal statement on a case-by-case basis. The determination will depend on the factors listed above, and any other evidence deemed relevant by the Commission. As noted above, many communications sent by a membership organization to its members are not covered by the rebuttable presumption.

Are communications designed to encourage individuals to register to vote or to vote covered by the presumption?

The Election Law excludes from the legal definition of expenditure "activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not mention a clearly identified candidate". (21-A M.R.S.A. §1012(2)(B)(10)) Those communications are not covered by the rebuttable presumption. If communications designed to encourage individuals to register to vote or to vote name or depict a clearly identified candidate and meet the other requirements of the presumption (including the \$100 per candidate threshold), the person making the expenditure may rebut the presumption by filing a written statement explaining that the materials were distributed for the purpose of encouraging voting or registration and were not intended to influence the election.

Are polling, voter surveys, and public opinion research covered by the presumption?

The Commission believes that scripted conversations made by live telephone callers within the last 21 days before an election could be covered by the rebuttable presumption. If a public opinion survey within the last 21 days before an election contains references to a candidate, and the person funding the survey believes that the references were not made with the intent to influence the election, the person should file a rebuttal statement. If a survey relates to a public issue and does not mention a candidate's name, it is not subject to the presumption and no report or rebuttal notice must be filed. If public opinion research (e.g., voter identification information) is contributed to a PAC to influence an election, the PAC must report the research as an in-kind contribution including the fair market value of the research.

Are Section 527 Organizations covered by the law?

National organizations are subject to the Maine Election Law if they raise or spend money regarding state candidates in Maine. This includes so-called Section 527 organizations that are organized outside the State of Maine. If a Section 527 organization makes an expenditure that is covered by the rebuttable presumption, it is required to file an independent expenditure report or a rebuttal statement.

What is the consequence of filing an independent expenditure report late?

The late filing of an independent expenditure report can result in the assessment of a civil penalty under 21-A M.R.S.A. §1020-A(4).

How Can I Get More Advice?

You are welcome to telephone or write the Commission staff at the above telephone number or address.

21-A M.R.S.A. §1019-B. REPORTS OF INDEPENDENT EXPENDITURES.

1. Independent expenditures; definition. For the purposes of this section, an "independent expenditure":

A. Is any expenditure made by a person, party committee, political committee or political action committee, other than by contribution to a candidate or a candidate's authorized political committee, for any communication that expressly advocates the election or defeat of a clearly identified candidate; and

B. Is presumed in races involving a candidate who is certified as a Maine Clean Election Act candidate under section 1125, subsection 5 to be any expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate and is disseminated during the 21 days, including election day, before a primary election; the 21 days, including election day, before a general election; or during a special election until and on election day.

2. Rebutting presumption. A person presumed under this section to have made an independent expenditure may rebut the presumption by filing a signed written statement with the commission within 48 hours of making the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate, supported by any additional evidence the person chooses to submit. The commission may gather any additional evidence it deems relevant and material and must determine by a preponderance of the evidence whether the cost was incurred with intent to influence the nomination, election or defeat of a candidate.

3. Report required; content; rules. A person, party committee, political committee or political action committee that makes independent expenditures aggregating in excess of \$100 during any one candidate's election shall file a report with the commission. In the case of a municipal election, a copy of the same information must be filed with the municipal clerk.

A. A report required by this subsection must be filed with the commission according to a reporting schedule that the commission shall establish by rule that takes into consideration existing campaign finance reporting requirements and matching fund provisions under chapter 14. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

B. A report required by this subsection must contain an itemized account of each contribution or expenditure aggregating in excess of \$100 in any one candidate's election, the date and purpose of each contribution or expenditure and the name of each payee or creditor. The report must state whether the contribution or expenditure is in support of or in opposition to the candidate and must include, under penalty of perjury, as provided in Title 17-A, section 451, a statement under oath or affirmation whether the contribution or expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate or an authorized committee or agent of the candidate.

C. A report required by this subsection must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form.

COMMISSION RULES, CHAPTER 1, SECTION 10. REPORTS OF INDEPENDENT EXPENDITURES.

1. General. Any person, party committee, political committee or political action committee that makes an independent expenditure aggregating in excess of \$100 per candidate in an election must file a report with the Commission according to this section.
2. Definitions. For purposes of this section, the following phrases are defined as follows:
 - A. "Clearly identified," with respect to a candidate, has the same meaning as in Title 21-A, chapter 13, subchapter II.
 - B. "Expressly advocate" means any communication that uses phrases such as "vote for the Governor," "reelect your Representative," "support the Democratic nominee," "cast your ballot for the Republican challenger for Senate District 1," "Jones for House of Representatives," "Jean Smith in 2002," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Woody," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!".
 - C. "Independent expenditure" has the same meaning as in Title 21-A, section 1019-B. Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate and is not an independent expenditure.
3. Reporting Schedules. Independent expenditures must be reported to the Commission in accordance with the following provisions:
 - A. Independent expenditures aggregating in excess of \$100 per candidate per election but not in excess of \$250 made by any person, party committee, political committee or political action committee must be reported to the Commission in accordance with the following reporting schedule, except that expenditures made in the last 11 days before an election must be reported within 24 hours of the expenditure.
 - (1) Quarterly Reports.

- (a) A report must be filed on January 15th and be complete as of January 5th;
 - (b) A report must be filed on April 10th and be complete as of March 31st;
 - (c) A report must be filed on July 15th and be complete as of July 5th; and
 - (d) A report must be filed on October 10th and be complete as of September 30th.
- (2) Pre-Election Report. A report must be filed on the 12th day before the election is held and be complete as of that day.

If the total of independent expenditures made to support or oppose a candidate exceeds \$100, each subsequent amount spent to support or oppose the candidate must be reported as an independent expenditure. As long as the total amount spent with respect to the candidate does not exceed \$250, all reports must be filed according to the deadlines in this paragraph. If the total amount spent per candidate exceeds \$250, the reports must be filed in accordance with paragraph B.

[NOTE: FOR EXAMPLE, IF A COMMITTEE MAKES THREE \$80 EXPENDITURES IN SUPPORT OF A CANDIDATE ON SEPTEMBER 20, THE 15TH DAY BEFORE THE ELECTION AND THE 8TH DAY BEFORE THE ELECTION, THOSE THREE EXPENDITURES MUST BE REPORTED ON OCTOBER 10th, AND THE 12TH AND 7TH DAYS BEFORE THE ELECTION, RESPECTIVELY.]

- B. Independent expenditures aggregating in excess of \$250 per candidate per election made by any person, party committee, political committee or political action committee must be reported to the Commission within 24 hours of those expenditures. If any additional expenditure, regardless of amount, increases the total spent per candidate above the threshold of \$250, each additional expenditure must be reported within 24 hours.

[NOTE: FOR EXAMPLE, IF A COMMITTEE HAS REPORTED INDEPENDENT EXPENDITURES TOTALING \$300 IN SUPPORT OF A CANDIDATE, AND THE COMMITTEE MAKES AN ADDITIONAL \$50 INDEPENDENT EXPENDITURE IN SUPPORT OF THE CANDIDATE, THE ADDITIONAL \$50 EXPENDITURE MUST BE REPORTED WITHIN 24 HOURS.]

- C. Reports must contain information as required by Title 21-A, chapter 13, subchapter II (§§ 1016-1017-A), and must clearly identify the candidate and indicate whether the expenditure was made in support of or in opposition to the candidate. Reports filed after the eighth day before an election must include the following information:

1. the date on which the person making the expenditure placed the order with the vendor for the goods or services;
 2. the approximate date when the vendor began providing design or any other services in connection with the expenditure;
 3. the date on which the person making the expenditure first learned of the total amount of the expenditure; and
 4. a statement why the expenditure could not be reported by the eighth day before the election.
4. Multi-Candidate Expenditures. When a person or organization is required to report an independent expenditure for a communication that supports multiple candidates, the cost should be allocated among the candidates in rough proportion to the benefit received by each candidate.
- A. The allocation should be in rough proportion to the number of voters who will receive the communication and who are in electoral districts of candidates named or depicted in the communication. If the approximate number of voters in each district who will receive the communication cannot be determined, the cost may be divided evenly among the districts in which voters are likely to receive the communication.
- [NOTE: FOR EXAMPLE, IF CAMPAIGN LITERATURE NAMING SENATE CANDIDATE X AND HOUSE CANDIDATES Y AND Z ARE MAILED TO 10,000 VOTERS IN X'S DISTRICT AND 4,000 OF THOSE VOTERS RESIDE IN Y'S DISTRICT AND 6,000 OF THOSE VOTERS LIVE IN Z'S DISTRICT, THE ALLOCATION OF THE EXPENDITURE SHOULD BE REPORTED AS: 50% FOR X, 20% FOR Y, and 30% FOR Z.]
- B. If multiple county or legislative candidates are named or depicted in a communication, but voters in some of the candidates' electoral districts will not receive the communication, those candidates should not be included in the allocation.
- [NOTE: FOR EXAMPLE, IF AN EXPENDITURE ON A LEGISLATIVE SCORECARD THAT NAMES 150 LEGISLATORS IS DISTRIBUTED TO VOTERS WITHIN A TOWN IN WHICH ONLY ONE LEGISLATOR IS SEEKING RE-ELECTION, 100% OF THE COST SHOULD BE ALLOCATED TO THAT LEGISLATOR'S RACE.]
- C. If a candidate who has received matching funds because of a multi-candidate communication believes that he or she deserves additional

matching funds because the communication disproportionately concerns his or her race, the Commission may grant additional matching funds in proportion to the relative treatment of the candidates in the communication.

5. Rebuttable Presumption. Under Title 21-A M.R.S.A. §1019-B(1)(B), an expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate in a race involving a Maine Clean Election Act candidate and that is disseminated during the 21 days before an election will be presumed to be an independent expenditure, unless the person making the expenditure submits a written statement to the Commission within 48 hours of the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate.

- A. The following types of communications may be covered by the presumption if the specific communication satisfies the requirements of Title 21-A M.R.S.A. §1019-B(1)(B):

- (1) Printed advertisements in newspapers and other media;
- (2) Television and radio advertisements;
- (3) Printed literature;
- (4) Recorded telephone messages;
- (5) Scripted telephone messages by live callers; and
- (6) Electronic communications.

This list is not exhaustive, and other types of communications may be covered by the presumption.

- B. The following types of communications and activities are not covered by the presumption, and will not be presumed to be independent expenditures under Title 21-A M.R.S.A. Section 1019-B(1)(B):

- (1) news stories and editorials, unless the facilities distributing the communication are owned or controlled by the candidate or a political committee;
- (2) activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not name or depict a clearly identified candidate;
- (3) any communication from a membership organization to its members or from a corporation to its stockholders if the organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person for state or county office;

- (4) the use of offices, telephones, computers, or similar equipment when that use does not result in additional cost to the provider; and
 - (5) other communications and activities that are excluded from the legal definition of “expenditure” in the Election Law.
- C. If an expenditure is covered by the presumption and is greater, in the aggregate, than \$100 per candidate per election, the person making the expenditure must file an independent expenditure report or a signed written statement that the expenditure was not made with the intent to influence the nomination, election or defeat of a candidate. The filing of independent expenditure reports should be made in accordance with the filing schedule in subsections 3(A) and 3(B) of this rule. Independent expenditures aggregating \$100 or less per candidate per election do not require the filing of an independent expenditure report or a rebuttal statement.
- D. If a committee or association distributes copies of printed literature to its affiliates or members, and the affiliates or members distribute the literature directly to voters, the 21-day period applies to the date on which the communication is disseminated directly to voters, rather than the date on which the committee or association distributes the literature to its affiliates or members.
- E. For the purposes of determining whether a communication is covered by the presumption, the date of dissemination is the date of the postmark, hand-delivery, or broadcast of the communication.
- F. An organization that has been supplied printed communications covered by the presumption and that distributes them to voters must report both its own distribution costs and the value of the materials it has distributed, unless the organization supplying the communications has already reported the costs of the materials to the Commission. If the actual costs of the communications cannot be determined, the organization distributing the communication to voters must report the estimated fair market value.
- G. If a person wishes to distribute a specific communication that appears to be covered by the presumption and the person believes that the communication is not intended to influence the nomination, election or defeat of a candidate, the person may submit the rebuttal statement to the Commission in advance of disseminating the communication for an early determination. The request must include the complete communication and be specific as to when and to whom the communication will be disseminated.